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20999	7590	04/27/2009	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			LONEY, DONALD J	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/631,937

Filing Date: July 31, 2003

Appellant(s): LEVINE ET AL.

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Brian M. McGuire  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed January 12, 2009 appealing from the Office action mailed July 10, 2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: Claims 22 and 23 are rejected under 35 USC 103(a) as being unpatentable over either Tate et al or Reilly et al in view of Kiuchi as applied to claims 1-13, 15-17 and 19-21, and further in view of Curry et al (GB 2106557) with the underlined the difference between the appellant's indicated grounds and the grounds as presented in the final office action, mailed July 10, 2008 since this was a "further in view" of rejection.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

4,008,801	REILLY ET AL	02-1977
4,559,258	KIUCHI	12-1985
5,558,926	TATE ET AL	09-1996

GB 2106557 A, CURRY ET AL et al (04-1983)

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 1-13, 15-17 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tate et al (558926) in view of Kiuchi (4559258).

Tate discloses that guides 8 on fabric belts can be V-shaped. Tate also discloses the additional layer 7 on the other side of the fabric belt. See figure 3. Tate teaches the additional layer 7 encapsulates at least 85% of the fabric in order to form a good bond (see column 4, lines 40-53). Tate et al does fail to teach the additional layer as encapsulating 50% or less than the fabric and the guide encapsulating at least 50% or more of the fabric.

Kiuchi discloses that when coatings are provided on both sides of the fabric in a belt that the each coating encapsulates 50% of the fabric. Refer to coatings 12, 12' in the figures which are both shown to encapsulate approximately half the fabric 11.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to Tate et al to encapsulate at least 50% of the fabric with both of the coatings, as is taught by Kiuchi, in order to securely and positively attach it thereto and the deeper into the fabric the material flows the greater the bond would be since the material would be able to attach to more of the fabric. This would merely

involve adjusting the depth of the coatings as needed to provide a superior bond to the fabric for both coatings.

5. Claims 1-13, 15-17 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reilly et al (4008801) in view of Kiuchi.

Reilly et al discloses a fabric 18 containing guides 20 formed on both edges of a belt. The guides are V-shaped ribs 31 per claim 1. Another layer is located on the other side of the fabric per claims 18-21. Refer to figures 1, 2 and 2a. The guide is disclosed as molded into the interstices of the fabric (column 3, lines 35-42) in order to securely and positively attach it thereto. The examiner deems the material flowing into the interstices as encapsulating the fabric caliper as recited by the applicant. Reilly et al is silent as to the depth of the encapsulation of both of the coatings forming the guide and layer on the opposite side thereof. The applicant recites at least 50% in claim 1.

Kiuchi discloses that when coatings are provided on both sides of the fabric in a belt that each coating encapsulates 50% of the fabric. Refer to coatings 12, 12' in the figures which are both shown to encapsulate approximately half the fabric 11.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to Reilly et al to encapsulate at least 50% of the fabric with both of the coatings, as is taught by Kiuchi, in order to securely and positively attach it thereto and the deeper into the fabric the material flows the greater the bond would be since the material would be able to attach to more of the fabric. This would merely involve adjusting the depth of the coatings as needed to provide a superior bond to the fabric for both coatings.

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6. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Tate et al or Reilly et al in view of Kiuchi as applied to claims 1-13, 15-17 and 19-21 above, and further in view of GB 2106557 to Curry et al.

The primary reference teaches the invention substantially as recited except for the stuffers used to control the degree of penetration of the coating. See the 35 U.S.C. 103 rejections above.

GB 2106557 discloses it is known to include stuff yarns 21 in a belt fabric in order to control the degree of penetration of a coating into the fabric. See page 3, lines 72-84.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to either Tate et al or Reilly et al to include stuff yarns in the fabric thereof, as is taught to be known by GB 2106557, in order to control the degree of penetration of the coating motivated by the fact GB 2106557 discloses this is known in the art of belt coating.

#### **(10) Response to Argument**

##### Appellants arguments over Tate et al in view of Kiuchi.

The appellant argues that Tate et al teaches one side of the fabric encapsulated to not less than 85%, therefore, the guide material could only encapsulate at most 15% of the fabric. While this is true, the examiner has relied upon the secondary reference to Kiuchi for a teaching that the layers of material encapsulating a fabric, used to form a belt as does the appellant, on either side thereof can encapsulate 50% of the fabric. The appellant argues that they encapsulate 50% or more of the fabric with guide material in

order to improve the guides' resistance to tearing off. It would be a predictable result that the more embedded the material in the fabric the stronger the bond would be thereto. The appellant argues that Kiuchi fails to disclose guides or encapsulation percentages. However, Tate et al discloses the guides and materials on both sides of the fabric while Kiuchi also discloses materials 12, 12' on both sides of the fabric that encapsulate 50% of the fabric as shown in figure 2. Kiuchi is also drawn to the belt art as is the appellant. A horizontal line in the middle of the fabric 11 in figure 2 shows the two layers approximately equally encapsulating the fabric. Additionally, example 2 indicates the coating reaches approximate the inside of the fabric (i.e. 50% thereof) and that one resin coating is 0.5mm and the other doctor coating is 0.5mm which encapsulates the fabric in approximately equal amounts (i.e. 50%). The appellant argues that Tate et al teaches away from the combination since they teach one coating with 85% encapsulation. However, the increased encapsulation of the guide material to the fabric, for added strength, would predictably increase the bonding strength thereto since the more embedded the material is to the fabric the stronger the bond there between.

Appellants arguments over Reilly et al in view of Kiuchi.

It appears the appellant is arguing that the fabric of Reilly et al is a separate fabric from the belt, however, the appellant is not claiming a belt, merely a fabric. The appellant also argues that the molding into the interstices of the fabric that the examiner refers to is between the fabric backing and not the guides and the belt, however, again the appellant is not claiming and/or reciting a belt, merely a fabric. As stated above, the

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increased encapsulation of the guide material to the fabric, for added strength, would predictably increase the bonding strength thereo since the more embedded the material is to the fabric the stronger the bond there between.

Appellants arguments over either Tate et al or Reilly et al in view of Kiuchi and further in view of Curry et al.

The appellant argues that Curry et al fails to disclose any V-guides, however, the combination of the primary references teach this and the examiner is only relying on Curry et al for its teaching of using stuff yarns in a belt fabric on order to control the degree of penetration of a coating into the fabric thereof which is the same reason the applicant is using these stuffer yarns.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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